

106TH CONGRESS  
2D SESSION

# H. R. 4943

To amend the Small Business Act to require that certain acquisitions of goods and services be from small business concerns and to authorize certain acquisitions using a governmentwide commercial purchase card, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 25, 2000

Mr. BARTLETT of Maryland introduced the following bill; which was referred to the Committee on Small business, and in addition to the Committee on Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Small Business Act to require that certain acquisitions of goods and services be from small business concerns and to authorize certain acquisitions using a governmentwide commercial purchase card, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Small Business Fed-  
5 eral Acquisition Simplification Act of 2000”.

1 **SEC. 2. PROCUREMENT USING GOVERNMENTWIDE COM-**  
2 **MERCIAL PURCHASE CARDS.**

3 Section 15 of the Small Business Act (15 U.S.C. 644)  
4 is amended by adding at the end the following new sub-  
5 section:

6 “(p) PROCUREMENT USING GOVERNMENTWIDE COM-  
7 MERCIAL PURCHASE CARDS.—

8 “(1) DEFINITIONS.—In this subsection, the fol-  
9 lowing definitions apply:

10 “(A) AUTHORIZED INDIVIDUAL.—The  
11 term ‘authorized individual’ means a person  
12 who has been granted authority, in accordance  
13 with Federal agency procedures, to acquire  
14 goods or services using a governmentwide com-  
15 mercial purchase card.

16 “(B) GOODS OR SERVICES.—The term  
17 ‘goods or services’ means all goods, supplies,  
18 and services (including construction services, re-  
19 search and development services, and commer-  
20 cial items) offered for sale or otherwise pro-  
21 vided by a small business concern.

22 “(C) GOVERNMENTWIDE COMMERCIAL  
23 PURCHASE CARD.—The term ‘governmentwide  
24 commercial purchase card’ means a purchase  
25 card issued to authorized individuals to use to  
26 acquire and pay for goods or services.

1           “(2) ACQUISITION REQUIREMENT.—Each ac-  
2           quisition of goods or services by an authorized indi-  
3           vidual using a governmentwide commercial purchase  
4           card shall be from small business concerns unless no  
5           small business concern—

6                   “(A) provides goods or services of the same  
7           kind or a comparable nature;

8                   “(B) can provide the goods or services  
9           within the required time schedule; or

10                   “(C) can meet the quality standards estab-  
11           lished in writing by the agency for the goods or  
12           services to be acquired.

13           “(3) BLIND OR SEVERELY DISABLED VEN-  
14           DORS.—Nothing in this subsection shall be con-  
15           strued to change or modify any requirement under  
16           any provision of the Javits-Wagner-O’Day Act (41  
17           U.S.C. 46 et seq.) that goods or services be acquired  
18           from people who are blind or who are severely dis-  
19           abled.

20           “(4) ACQUISITIONS FROM ENTITIES OTHER  
21           THAN SMALL BUSINESS CONCERNS.—If, using a gov-  
22           ernmentwide commercial purchase card, an author-  
23           ized individual acquires goods or services that are  
24           available from a small business concern from an en-

1       tity other than a small business concern, the author-  
2       ized individual shall—

3               “(A) report the acquisition to the person in  
4               the authorized individual’s agency who is re-  
5               sponsible for acquisition; and

6               “(B) document the reasons for not acquir-  
7               ing the goods or services from a small business  
8               concern.

9               “(5)   SMALL-VALUE   ACQUISITIONS.—Before  
10       making any acquisition using a governmentwide  
11       commercial purchase card of goods or services hav-  
12       ing an anticipated dollar value of \$2,500 or less, an  
13       authorized individual shall not be required to obtain  
14       individual price information or price quotations for  
15       the goods or services, but may consider—

16               “(A) the nature of the goods or services to  
17               be acquired, whether the market for such goods  
18               or services is highly competitive, and whether  
19               the goods or services are readily available;

20               “(B) information obtained in making re-  
21               cent acquisitions of the same or similar goods  
22               or services;

23               “(C) the dollar amount of the proposed ac-  
24               quisition; or

1 “(D) past experience concerning the prices  
2 of specific vendors.

3 “(6) AUTHORITY FOR MODERATE-VALUE ACQUI-  
4 SITIONS.—

5 “(A) IN GENERAL.—Subject to paragraph  
6 (2), an authorized individual may acquire using  
7 a governmentwide commercial purchase card  
8 goods or services having an anticipated dollar  
9 value of more than \$2,500 but not more than  
10 \$25,000, only if the authorized individual ob-  
11 tains pricing information (that includes the  
12 maximum benefit of any discounts) from not  
13 less than 2 small business concerns that deal in  
14 the type or kind of goods or services sought.

15 “(B) SOURCE OF PRICING INFORMA-  
16 TION.—The pricing information referred to in  
17 subparagraph (A) may be based on any of the  
18 following:

19 “(i) Printed price lists or catalogs.

20 “(ii) Oral or written price quotations  
21 or offers from small business concerns that  
22 deal in the type or kind of goods or serv-  
23 ices sought.

24 “(iii) Prices obtained from electronic  
25 media such as the Internet.

1           “(C) CONSIDERATIONS.—When making an  
2           acquisition under this paragraph, in addition to  
3           considerations of price, an authorized individual  
4           may consider information such as previous ex-  
5           perience with the vendor of the goods or serv-  
6           ices, customer surveys, or other reasonable  
7           bases.

8           “(7) AUTHORITY FOR LARGE-VALUE ACQUISI-  
9           TIONS.—

10           “(A) IN GENERAL.—Subject to paragraph  
11           (2), an authorized individual may acquire using  
12           a governmentwide commercial purchase card  
13           goods or services having an anticipated dollar  
14           value of more than \$25,000, but not more than  
15           \$100,000, only if the authorized individual—

16           “(i) advertises the proposed acquisi-  
17           tion by electronic media such as the Inter-  
18           net not fewer than 12 days before the ac-  
19           quisition;

20           “(ii) considers all price quotations  
21           that are received in a timely manner; and

22           “(iii) solicits price quotations or offers  
23           from at least 3 small business concerns  
24           that deal in the type or kind of goods or

1 services sought, including at least 1 of the  
2 following:

3 “(I) A small business concern  
4 owned and controlled by socially and  
5 economically disadvantaged individ-  
6 uals.

7 “(II) A small business concern  
8 owned and controlled by women.

9 “(III) A small business concern  
10 owned and controlled by veterans.

11 “(B) CONSIDERATIONS.—When making an  
12 acquisition under this paragraph, in addition to  
13 considerations of price, an authorized individual  
14 shall consider—

15 “(i) the nature of the goods or serv-  
16 ices to be acquired, whether the market for  
17 such goods or services is highly competi-  
18 tive, and whether the goods or services are  
19 readily available in several makes or  
20 brands;

21 “(ii) any information regarding the  
22 vendor’s past performance with respect to  
23 recent acquisitions of the same or similar  
24 items; and

1 “(iii) the urgency of the proposed ac-  
2 quisition.

3 “(8) SOURCE LISTS.—

4 “(A) IN GENERAL.—Each agency shall  
5 maintain, or contribute to the maintenance of,  
6 a comprehensive source list (in written or elec-  
7 tronic form) of small business concerns that are  
8 vendors of goods or services of the kind likely  
9 to be acquired by the agency.

10 “(B) STATUS OF VENDOR.—Each list de-  
11 scribed in subparagraph (A) shall identify  
12 whether each vendor on the list is any of the  
13 following:

14 “(i) A small business concerns owned  
15 and controlled by socially and economically  
16 disadvantaged individuals.

17 “(ii) A small business concern owned  
18 and controlled by women.

19 “(iii) A small business concern owned  
20 and controlled by veterans.

21 “(9) PUBLICATION AND REPORTING REQUIRE-  
22 MENTS.—

23 “(A) IN GENERAL.—Not later than 90  
24 days after the end of each fiscal year, each Fed-  
25 eral agency shall publish in the Federal Reg-



1           ister, and transmit to the Office of Advocacy of  
2           the Small Business Administration, information  
3           regarding acquisitions made under this sub-  
4           section.

5           “(B) CONTENTS.—The information pub-  
6           lished and reported under subparagraph (A)  
7           shall include each of the following:

8                   “(i) The total dollar value of acquisi-  
9                   tions under this subsection.

10                   “(ii) The total dollar value of acquisi-  
11                   tions from small business concerns.

12                   “(iii) The total dollar value of acquisi-  
13                   tions from entities that are not small busi-  
14                   ness concerns.

15                   “(iv) The total dollar value of acquisi-  
16                   tions from small business concerns owned  
17                   and controlled by socially and economically  
18                   disadvantaged individuals.

19                   “(v) The total dollar value of acquisi-  
20                   tions from small business concerns owned  
21                   and controlled by women.

22                   “(vi) The total dollar value of acquisi-  
23                   tions from small business concerns owned  
24                   and controlled by veterans.”.

1 **SEC. 3. PROCUREMENT AUDIT AND REPORT TO CONGRESS.**

2 (a) IN GENERAL.—The Comptroller General of the  
3 United States shall conduct an audit of the books and ac-  
4 counts of the 10 largest Federal agencies (as measured  
5 by the total dollar amount of acquisitions) acquiring goods  
6 or services using governmentwide commercial purchase  
7 cards.

8 (b) REPORT.—

9 (1) IN GENERAL.—Not later January 1, 2002,  
10 the Comptroller General of the United States shall  
11 transmit to the Committees on Small Business of  
12 the House of Representatives and the Senate a re-  
13 port containing the results of the audit conducted  
14 under subsection (a) and information regarding com-  
15 pliance with the requirements of this Act

16 (2) CONTENTS.—The report described in para-  
17 graph (1) shall specifically address the each of the  
18 following with respect to each Federal agency:

19 (A) The total dollar amount of goods or  
20 services acquired in acquisitions of \$100,000 or  
21 less that were acquired from small business  
22 concerns, and the total dollar amount of such  
23 acquisitions that were acquired from entities  
24 other than small business concerns.

25 (B) The total dollar amount of goods or  
26 services acquired in acquisitions of \$2,500 or

1 less that were acquired using a governmentwide  
2 commercial purchase card from small business  
3 concerns, and the total dollar amount of such  
4 acquisitions from entities other than small busi-  
5 ness concerns.

6 (C) The total dollar amount of goods or  
7 services acquired in acquisitions of \$100,000 or  
8 less from each of the following:

9 (i) Small business concerns owned and  
10 controlled by socially and economically dis-  
11 advantaged individuals.

12 (ii) Small business concerns owned  
13 and controlled by women.

14 (iii) Small business concerns owned  
15 and controlled by veterans.

16 (D) The total dollar amount of goods or  
17 services acquired in acquisitions of \$100,000 or  
18 less using a governmentwide commercial pur-  
19 chase card from each of the types of small busi-  
20 ness concerns listed in clauses (i) through (iii)  
21 of subparagraph (C).

22 (E) Information regarding the source lists  
23 maintained pursuant to section 15(p)(8) of the  
24 Small Business Act, as added by section 2 of  
25 this Act, and information evaluating how com-

1           preprehensive such lists are and how accurate such  
2           lists are in identifying whether a source is a  
3           small business concern, a small business con-  
4           cern owned and controlled by socially and eco-  
5           nomically disadvantaged individuals, small busi-  
6           ness concern owned and controlled by women,  
7           small business concern owned and controlled by  
8           veterans.

9           (F) Information regarding each rule, regu-  
10          lation, directive and policy statement that was  
11          issued to implement this Act.

12          (G) Any recommendations to the agency  
13          for improving compliance with the requirements  
14          of this Act and any recommendations for legis-  
15          lative changes to minimize noncompliance and  
16          to increase Federal acquisition from small busi-  
17          ness concerns.

18          (c) DEFINITIONS.—In this section, the following defi-  
19          nitions apply:—

20               (1) GOODS OR SERVICES.—The term “goods or  
21               services” has the meaning given such term in section  
22               15(p)(1)(B) of the Small Business Act (as added by  
23               section 2 of this Act).

24               (2) GOVERNMENTWIDE COMMERCIAL PURCHASE  
25               CARD.—The term “governmentwide commercial pur-

1       chase card” has the meaning given such term in sec-  
 2       tion 15(p)(1)(C) of the Small Business Act (as  
 3       added by section 2 of this Act).

4   **SEC. 4. DIRECT PAYMENT TO SUBCONTRACTORS.**

5       (a) IN GENERAL.—Section 8(d) of the Small Busi-  
 6   ness Act (15 U.S.C. 637(d)) is amended by—

7           (1) redesignating paragraphs (8), (9), (10), and  
 8       (11) as (9), (10), (11), and (12), respectively; and

9           (2) by inserting after paragraph (7) the fol-  
 10   lowing new paragraph:

11           “(8) TIMELY PAYMENT TO SMALL BUSINESS  
 12   SUBCONTRACTORS.—

13           “(A) IN GENERAL.—Subject to subpara-  
 14   graph (B), the failure of a prime contractor to  
 15   make timely payment to a subcontractor that is  
 16   a small business concern shall be a material  
 17   breach of the contract with the Federal agency.

18           “(B) CONSIDERATION OF PERFORM-  
 19   ANCE.—Prior to making any determination of  
 20   failure for the purposes of subparagraph (A),  
 21   the contracting officer shall consider all reason-  
 22   able issues regarding the performance, or lack  
 23   of performance, of the subcontractor.

24           “(C) WITHHOLDING OF PAYMENTS.—At  
 25   any time before the date that is 30 days after

1 the date of a breach described in subparagraph  
2 (A), the Federal agency may withhold any  
3 amounts due and owing the subcontractor from  
4 payments due to the prime contractor and make  
5 direct payment of such amounts to the subcon-  
6 tractor.”.

7 (b) REGULATIONS.—Not later than 180 days after  
8 the date of enactment of this Act, the Federal Acquisition  
9 Regulation and the Defense Acquisition Regulation shall  
10 be amended to implement the amendment made by sub-  
11 section (a).

12 **SEC. 5. SUBCONTRACTING CERTIFICATION.**

13 Section 8(d)(6) of the Small Business Act (15 U.S.C.  
14 637(d)(6)) is amended by—

15 (1) in subparagraph (H) (as redesignated by  
16 section 6), by striking “and” at the end;

17 (2) in subparagraph (I) (as redesignated by sec-  
18 tion 6), by striking the period at the end and insert-  
19 ing “; and”; and

20 (3) by inserting at the end the following new  
21 subparagraph:

22 “(J) certification that the offeror or bidder  
23 will acquire articles, equipment, supplies, serv-  
24 ices, or materials or obtain the performance of  
25 construction work from subcontractors named

1 in the bid or proposal and in the amount and  
2 quality used in preparing the bid or proposal  
3 unless the subcontractor is no longer in busi-  
4 ness or can no longer meet the quality, quan-  
5 tity, or delivery date.”.

6 **SEC. 6. INTERNET ANNOUNCEMENTS OF CERTAIN SUBCON-**  
7 **TRACTING OPPORTUNITIES.**

8 Section 8(d)(6) of the Small Business Act (15 U.S.C.  
9 637(d)(6)) is amended by—

10 (1) redesignating subparagraphs (D), (E), and  
11 (F) as (G), (H), and (I), respectively; and

12 (2) by inserting after subparagraph (C) the fol-  
13 lowing:

14 “(D) assurances that the offeror or bidder  
15 will provide information concerning subcon-  
16 tracting opportunities on an appropriate Inter-  
17 net site accessible to small business concerns  
18 (including small business concerns owned and  
19 controlled by socially and economically dis-  
20 advantaged individuals, small business concerns  
21 owned and controlled by women, and small  
22 business concerns owned and controlled by vet-  
23 erans);

24 “(E) not later than 10 days after the  
25 award of a contract for which a subcontracting

1 plan is required under paragraph (4) or (5), the  
2 offeror or bidder shall provide on the Internet—

3 “(i) the name and address of the of-  
4 feror or bidder;

5 “(ii) the name, title, telephone, and  
6 facsimile transmission number, and elec-  
7 tronic mail and postal address of the indi-  
8 vidual within the employ of the offeror or  
9 bidder who is responsible for administering  
10 the subcontracting program; and

11 “(iii) a list of anticipated subcon-  
12 tracting opportunities including a descrip-  
13 tion of the quality, quantity, and antici-  
14 pated acquisition and delivery dates of the  
15 goods or services, the provision or perform-  
16 ance of which is to be subcontracted;

17 “(F) in order to ensure that small business  
18 concerns have an equitable opportunity to com-  
19 pete for subcontracts, not less than 30 days be-  
20 fore the award of a contract with respect to  
21 each subcontracting opportunity, each bidder or  
22 offeror required to submit a subcontracting  
23 plan shall provide on the Internet—

24 “(i) the name and address of offeror  
25 or bidder;



1 “(ii) the name, title, telephone and  
2 facsimile transmission number, and elec-  
3 tronic mail and postal address of the indi-  
4 vidual within the employ of the offeror or  
5 bidder who is the buyer for the particular  
6 acquisition;

7 “(iii) a description of the quality,  
8 quantity, and anticipated acquisition and  
9 delivery date of the goods or services to be  
10 acquired, and, if applicable, the any no-  
11 menclature, any National Stock Number or  
12 other part number, and a brief description  
13 of the form, fit, or function, physical di-  
14 mensions, predominant material or manu-  
15 facture, of the goods or services, or similar  
16 information that will assist a prospective  
17 subcontractor bid on the subcontracting  
18 opportunity;

19 “(iv) the procurement procedures to  
20 be followed in awarding the subcontract;  
21 and

22 “(v) a statement that all responsible  
23 sources that are small business concerns  
24 may submit a bid, proposal, or quotation,  
25 as appropriate.”.

1   **SEC. 7. DEFINITION OF INTERNET.**

2           Section 3 of the Small Business Act (15 U.S.C. 632)  
3 is amended by adding at the end the following new sub-  
4 section:

5                   “(r) DEFINITION OF INTERNET.—In this Act,  
6           the term ‘Internet’ has the meaning given such term  
7           in section 230(f)(1) of the Communications Act of  
8           1934.”.

○